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CrI.O.P.(MD)No.14668 of 2020



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE **K.K.RAMAKRISHNAN**

CrI.O.P.(MD)No.14668 of 2020

and

CrI.M.P.(MD).No.6923 of 2020

1.Parthipan
2.Ganagavel
3.N.Sahul Hameed
4.Loganathan
5.Karuppaiah

... Petitioners

Vs.

1.The Inspector of Police,
Austinpatti Police Station,
Tirumangalam Taluk,
Madurai District.

2.Tirunavakarasu

... Respondents

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records pertaining to the first Information Report in Crime No.1762 of 2020 dated 02.10.2020 on the file of the first respondent and quash the same as illegal.

For petitioners : Mr.C.M.Arumugam

For 1stRespondent : Mr.P.Kottaichamy
Government Advocate (CrI. Side)

For 2nd Respondent : No appearance



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ORDER

This petition has been filed to quash the first Information Report in Crime No.1762 of 2020 dated 02.10.2020 on the file of the first respondent.

2.The petitioner is said to have committed the offence under Sections 379 of the IPC and Section 21(5) of Mines and Minerals (Development) Act, 1957.

3.On 02.10.2020 at about 16.00 hours, the petitioners are said to have transported sand in the lorries in violation of the permission granted by the District Collector beyond the area mentioned in the permission. Thereby, the respondent police registered the case as against the petitioners for the above alleged offences. The petitioners filed this quash petition to quash the FIR registered against them.

4.The learned counsel appearing for the petitioners submitted that the petitioners transported the used sand from his patta land in S.Nos. 115/2, 115/4A, 115/5A, 115/6, 115/7, 116/2, 117/7, 116/1A and 116/1A of Kalparavu Village in Sivagangai District, by following the



proceedings passed by the District Collector, Sivagangai District, in Na.Ka.M2/776/2017, dated 18.08.2020. He further submitted that en-route to the destination, the lorries were intercepted by the respondent Police. Hence, the present petition is filed to quash the proceedings.

5.The learned Government Advocate (Crl. Side) on instructions received from Mrs.A.Lakshmi Latha, the inspector of Police, Thirumangalam Town Police Station, Madurai District and Mr.K.Thirunavukarasu, Special Sup Inspector of Police, Thirumangalam Taluk Police Station, Madurai District, who are also present before this Court, submitted that except the confession of the accused, no materials were collected. He further submitted the investigation was completed and final report was filed before the learned Judicial Magistrate, Thirumangalam. The same is not taken on file.

6.The petitioners are Accused No.1 to 5 in Crime No.1762 of 2020. The respondent police registered the case against the petitioners for the alleged offences under Section 379 of the IPC and Section 21(5) of Mines and Minerals (Development) Act, 1957. In the FIR, it is alleged that on 02.10.2020 at about 16 hours, the petitioners were said to have transported sand in the lorries bearing registration Nos.TN-45 AU-1754



and TN-09 AD-3579. It is further alleged that the used sand was taken from the patta land in S.Nos.115/2, 115/4A, 115/5A, 115/6, 115/7, 116/2, 117/7, 116/1A and 116/1A of Kalparavu Village in Sivagangai District, in violation of the permission granted by the District Collector. According to the FIR, the same was transported beyond the jurisdictional area mentioned in the permission granted by the District Collector. The investigation was completed and final report also was filed before the jurisdictional Court.

7.The learned counsel for the petitioner, by way of reply, submitted that the filing of the final report is not a ground to dismiss the quash petition. The Hon'ble Supreme Court in the case of ***Abhishek v. State of M.P.***, reported in ***2023 SCC Online SC 1083*** has held as follows:

11.This being the factual backdrop, we may note at the very outset that the contention that the appellants' quash petition against the FIR was liable to be dismissed, in any event, as the chargesheet in relation thereto was submitted before the Court and taken on file, needs mention only to be rejected. It is well settled that the High Court would continue to have the power to entertain and act upon a petition filed under Section [482 Cr.P.C.](#) to quash the FIR even when a charge sheet is filed by the police during the pendency of such petition



[See Joseph Salvaraj A. v. State of Gujarat ([\(2011\) 7 SCC 59](#))]. This principle was reiterated in Anand Kumar Mohatta v. State (NCT of Delhi), Department of Home [[\(2019\) 11 SCC 706](#)]. This issue, therefore, needs no further elucidation on our part.

In view of the same, there is no bar to invoke the inherent power to quash the proceedings even after the final report was filed pending the quash petition filed to quash the FIR. This Court has power to look into the material collected during the investigation and find out any offence is made out as against the petitioners to continue the proceedings.

8. Applying the above principle, this court is inclined to look into the allegations against the petitioners. As per the FIR and final report, it is the specific case of the investigating agency that the petitioners transported the sand beyond the jurisdictional limit fixed by the District Collector by order dated 18.08.2020, in Na.Ka.M2/776/2017.

9. From the materials collected by the investigating agency, it is clear that the petitioners already got permission from the District Collector and also paid the fees as fixed by the District Collector and hence, the charge against the petitioners under Section 21(5) of Mines and Minerals (Development) Act, 1957 is not made out.



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10. The petitioners got permission from the Collector to excavate the sand from their own land and transported for their personal use. The investigating agency has not collected any material to show that the petitioners transported the said sand to sell to the third parties.

11. The petitioners also transported through the route mentioned in the permission of the District Collector and there was no detour as projected by the investigating agency. They transported the sand through the usual route and there was no intentional violation. They applied to dig sand in their own land for their domestic purpose and obtained permission. In the said circumstances, continuation of proceedings as against the petitioners amounts to abuse of process of law. Hence, it is a fit case to exercise the power under Section 482 Cr.P.C, even though final report was filed by the investigating agency, during the pendency of petition for quashing of the FIR. Hence, this Court is inclined to quash the final report filed before the Judicial Magistrate, Thirumangalam.

12. Accordingly, this Criminal Original Petition is allowed. The FIR and the proceedings of final report filed in the Crime No.1762 of 2020, on the file of the respondent police before the learned Judicial



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Magistrate, Thirumangalam, is hereby quashed. Consequently, the connected criminal miscellaneous petition is closed.

27.11.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No

vsg/sbn

To

- 1.The learned Judicial Magistrate,
Thirumangalam.
- 2.The Inspector of Police,
Austinpatti Police Station,
Tirumangalam Taluk,
Madurai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN. J.

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